

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, May 28, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Linda Radler, Chairman  
James Ward  
Robert Bartholomew  
Paul Schultz  
Mary Voelker

**BOARD MEMBERS ABSENT:**

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Richard Reith, BA03:024, petitioner  
David Byczek, BA03:038, petitioner  
Daniel and Barbara Hayden, BA03:039, petitioners  
James Zemanovic, BA03:040, petitioner  
Donald and Claire Wooley, BA03:041, petitioners  
Ray Dwyer, BA03:041, neighbor  
Brian and Laura Glaessner, BA03:042, petitioners  
Keith Schultz, BA03:042, architect  
Kevin and Heather Bonnell, BA03:043, petitioners  
Kent Johnson, Johnson Design, BA03:043, architect  
Pete Davis, Johnson Design, BA03:043, architect

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Ms. Voelker                      *I make a motion to approve the Summary of the Meeting of April 23, 2003.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

**NEW BUSINESS:**

**BA03:024 RICHARD REITH**

Mr. Bartholomew              *I make a motion to adopt the staff's recommendation with the following changes:*

*Condition #5 shall be changed to read, "Any proposed decks, patios, or stairs must meet the offset, road setback, and shore and 100-year floodplain setback requirements." This condition should appear in capital letters and bold-face type in the Decision Sheet.*

*Condition #10 shall be changed to read, "No new retaining walls will be permitted within 75 ft. of the shoreline, unless they are determined by the Land Resources Division to be necessary for erosion and sediment control."*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for denial of the petitioner's request, but approval of variances from the floor area ratio and open space requirements, with the following conditions:

1. The existing residence be razed and a new single-family residence and attached garage be constructed not exceeding 1,800 sq. ft. in size. The first floor must not exceed 1,250 sq. ft., including the residence and garage. This recommendation serves to implement the recommended changes, which have been offered by the staff and which are now being considered by the Waukesha County Park and Planning Commission.
2. No other outbuilding or additions to the new residence will be permitted, unless the Ordinance requirements change to permit them.
3. The new residence and attached garage must be located outside of the established road right-of-way, as it may be adjusted, as noted above, and must meet the required road setback, averaging with the structures on the adjacent properties, as they currently exist. The dimensions shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the residence and attached garage must be located the additional distance from the road, as the overhangs exceed two (2) ft. in width.
4. The new residence and attached garage must meet the 10 ft. offset requirement. The dimensions shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the residence and attached garage must be located the additional distance from the side lot line, as the overhangs exceed two (2) ft. in width.
5. Any proposed decks and/or patios must meet the offset, road setback, and shore and 100-year floodplain setback requirements for a deck and/or patio, and no impervious patios or deck-like structures can be built on the lakeside of the residence.
6. The residence and attached garage must be located either 75 ft. from the shore and 100-yr. floodplain setback, or the setback required after averaging with the two adjacent structures as they currently exist. A plat-of-survey or verification of the location of the residence to the east must be submitted to use the averaging provision. The dimensions shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the residence and attached garage must be located the additional distance from the shore and 100-yr. floodplain, as the overhangs exceed two (2) ft. in width.

7. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
9. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage and any appurtenances including decks, patios and proposed retaining walls, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
10. No retaining walls will be located closer than 75 ft. from the shoreline.
11. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 10.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

If approved as conditioned, the petitioner will enjoy a reasonable use of the property in the form of a new single-family residence with an attached garage and deck or patio with the intent to eliminate any potential adverse affects on adjoining properties and the natural resources in the area. Due to the extremely non-conforming size of the lot, a variance is required from the floor area ratio and open space to allow any reasonably sized residence. As conditioned, the approval allows the petitioner minimal amount of relief from the Ordinance requirements, while allowing a reasonable use of the property. The approved structure still conforms to the general desirability of the neighborhood. Other lots in the area with small lot sizes have similar sized structures and are located close to the road. The approval also results in removing the existing non-conforming structure on the property and decreases the non-conforming nature of the property significantly, which is the stated objective of the laws. Therefore, as recommended, the property will be in substantial conformance with the purpose and intent of the Ordinance.

**BA03:038 DAVID BYCZEK**

Ms. Radler

*I move to adopt the staff's recommendation, with the elimination of Condition #2.*

The motion was seconded by Mr. Ward and carried with three yes votes. Mr. Bartholomew and Ms.

Voelker voted no.

The staff's recommendation was for approval, with the following conditions:

1. The existing door from the upper level of the east side of the residence shall be removed and the landing and exterior stairs leading down from that door shall not be replaced.
2. The 8 ft. x 12. 2 ft. extension on the west side of the residence shall be removed.
3. The proposed 8 ft. x 8.5 ft. deck on the northwest corner of the residence shall not be permitted, but a deck may be constructed on the west side of the residence, provided it is at least 5 ft. from the side lot line and at least 33 ft. from the lake. Any stairs from that deck must also be at least 5 ft. from the west lot line and at least 33 ft. from the lake.
4. The replacement two story addition on the basement and first floor levels of the lake side of the residence shall be no larger than the existing addition.
5. The balcony from the upper level of the residence on the roof of the rebuilt addition shall not extend beyond the footprint of the addition and any stairs from that balcony must be at least 5 ft. from the side lot lines and at least 33 ft. from the lake.
6. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. A detailed cost estimate for the proposed construction, including labor and materials, must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit a reasonable use of the property, in the form of a remodeled residence that does not extend beyond the footprint of the existing structure. It is impossible to conform with the minimum open space requirement, with a "sewer reduction", of 7,000 sq. ft. because the total lot area is only 4,356 sq. ft. Therefore, a hardship exists with respect to the open space requirement. Since the rebuilt addition will be no closer to the side lot lines than the existing residence, it requires a special exception, rather than a variance, from the offset requirements, and a special exception does not require the demonstration of unnecessary hardship. The approval of this request, with the recommended conditions, will not adversely affect the adjoining properties or the lake and is not contrary to the public interest. As recommended, removal of the 8 ft. x 12.2 ft. extension on the west side of the residence and the exterior stairs on the east side of the residence, will result in a more conforming structure. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

Ms. Voelker

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the following changes:*

*Condition #7 shall be changed to read, "The total floor area of the proposed residence, including the first and second floors of the residence and the attached garage, but not any finished living area in the exposed basement, shall not exceed 2,185 sq. ft., as proposed. The first floor of the residence must be at least 850 sq. ft., but not more than 1,000 sq. ft., and the residence must have an attached garage of at least 400 sq. ft. The residence must conform with the minimum required house size, which is 1,100 sq. ft. for homes with at least 300 sq. ft. of unfinished basement area or 1,300 sq. ft. for homes without at least 300 sq. ft. of unfinished basement area. Finished living area in the exposed basement may be included as floor area for the purpose of meeting the minimum required house size."*

*An additional condition shall be added to read, "All appurtenances, such as patios and decks, must meet the shore and 100-year floodplain setback requirements." Note: This condition should appear in capital letters and bold-face type in the Decision Sheet.*

*An additional condition shall be added to read, "No new retaining walls will be permitted within 75 ft. of the shoreline, unless they are determined by the Land Resources Division to be necessary for erosion and sediment control."*

*The first two sentences of the last paragraph of the Staff Report shall be eliminated from the reasons stated in the Decision Sheet and replaced with language that states the Board feels that the proposed residence and attached garage is reasonably-sized for the property and is consistent with previous decisions.*

*I would also offer the following comments in response to the recommendation from the Department of Natural Resources (DNR):*

*It should be noted that the Waukesha County Shoreland and Floodland Protection Ordinance does not contain a shoreland buffer provision.*

*Regarding the statement contained in the DNR letter that, "increasing the amount of impervious surface will typically increase the flow of water runoff into a receiving body of water", I don't believe that a properly constructed wooden deck would necessarily increase water runoff because it allows for the slower ground infiltration of rainfall and snowmelt than if there was nothing there at all, and may actually prevent erosion from*

*occurring.*

*Regarding the statement about cumulative effect on water quality, I feel that is a subjective statement and we would like to have proof that it will occur, as the DNR has stated.*

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for denial of shore and floodplain setback variances to permit the construction of new retaining walls, but approval of road setback, floor area ratio, and open space variances to permit the construction of a new residence, with an attached garage and decks, subject to the following conditions:

1. The new residence and any proposed stairs to the lake shall be designed to conform with the existing topography. The proposed retaining walls shall not be permitted, except that the timber retaining wall at the bottom of the slope may be replaced, at the same height and in the same location, because that retaining wall has been determined to be necessary for erosion and sediment control. The other retaining walls shall be removed and the area seeded and matted, as recommended by the Land Resources Division.
2. If the established road right-of-way of Road "B" remains 66 ft. wide, the new residence and attached garage must be located at least 33 ft. from the centerline of the 20 ft. wide platted road right-of-way, as measured to the outer edge of the wall, with overhangs not exceeding 2 ft. in width. *Note: This will place the structure outside of the established road right-of-way and eliminate the need for Town Board approval to permit the residence to be located within the established road right-of-way and for the recordation of a Declaration of Restrictions, stating that if, in the future, any portion of the structure should interfere with necessary road improvements, that portion of the structure would be removed at the owner's expense.*
3. If the Oconomowoc Town Board and the Waukesha County Park and Planning Commission designate the established road right-of-way width of Road "B" to be 30 ft., the new residence may be located, as proposed, 21 ft. from the edge of the pavement and approximately 28 ft. from the centerline of the 20 ft. wide platted road right-of-way.
4. The new residence and attached garage must be at least 7 ft. from the side lot lines, as measured to the outer edges of the walls, with overhangs not to exceed 2 ft. in width. *Note: This will be in conformance with the minimum offset requirement, with a "sewer reduction".*
5. The new residence must be at least 27.2 ft. from the ordinary high water mark of the lake and at least 25 ft. from the 100-year floodplain, as measured to the outer edge of the wall, with the overhang not to exceed 2 ft. in width. Any proposed patios and decks must also be located at least 27.2 ft. from the ordinary high water mark of the lake and at least 25 ft. from the 100-year floodplain. *Note: This will be in conformance with the minimum shore and floodplain setback requirements, utilizing the shore and floodplain setback averaging provision of the Ordinance.*
6. Any sidewalks, walkways, or stairs along the sides of the residence or leading to the lake shall be no more than 3 ft. wide and they must be at least 3 ft. from the side lot lines.
7. The proposed residence must be reduced in size so that the total floor area, including the first and

second floors of the residence and the attached garage, but not any finished living area in the exposed basement, does not exceed 1,800 sq. ft. The first floor of the residence must be at least 850 sq. ft., but not more than 1,000 sq. ft. The residence must conform with the minimum required house size, which is 1,100 sq. ft. for homes with at least 300 sq. ft. of unfinished basement area or 1,300 sq. ft. for homes without at least 300 sq. ft. of unfinished basement area. Finished living area in the exposed basement may be included as floor area for the purpose of meeting the minimum required house size. This will result in a maximum floor area ratio of 45.1%. *Note: If the Oconomowoc Town Board and the Waukesha County Park and Planning Commission designate the established road right-of-way of Road "B" to be 30 ft., this will result in a maximum floor area ratio of 35.2%.*

8. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
9. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence and attached garage, as well as any proposed decks, patios, sidewalks, walkways, or stairs, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
10. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 9.
11. The non-conforming shed near the lake must be removed from the property within six (6) months of the issuance of a zoning permit for the new residence.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested shore and floodplain setback variances to permit the construction of new retaining walls, as proposed, would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. The Land Resources Division has determined that there is no erosion problem on the property and that new retaining walls are not necessary for erosion and sediment control. It is felt that this slope would be a good candidate to be planted with some type of ground cover, other than grass, that does not require mowing and that a reasonable use of the property is possible without the installation of the proposed retaining walls. Therefore, the approval of the requested shore and floodplain setback variances to permit new retaining walls would not be in conformance with the purpose and intent of the Ordinance.

Due to the size and configuration of the lot, hardships exist with respect to the road setback, floor area ratio, and open space requirements, and variances from those requirements are necessary for a reasonable use of the property. The shallow depth of the lot makes it impossible to locate a residence and garage in conformance with the minimum required house size and the shore and road setback requirements. Conformance with the maximum permitted floor area ratio of 19.5% would allow a total floor area of only 778 sq. ft., which does not conform with the minimum required house size, and it is impossible to conform with the minimum open space requirement of 7,000 sq. ft. because the total lot area is only 3,988.6 sq. ft.

It is felt, however, that the proposed residence is too large for the extremely small lot and that a smaller residence, as recommended, would still provide a reasonable use of the property. Therefore, since variances should only be granted to provide the minimum relief necessary for a reasonable use of the property, the new residence should not be permitted as proposed. As recommended, the new residence will be located outside of the established road right-of-way and in conformance with all other locational requirements of the Ordinance. As recommended, the new residence will not adversely affect the adjacent properties or the lake and it will not be contrary to the public interest. Therefore, the approval of road setback, floor area ratio, and open space variances, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **BA03:040 JAMES AND CYNTHIA ZEMANOVIC**

Mr. Schultz

*I make a motion to adopt the staff's recommendation, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial of a special exception from the maximum permitted accessory building floor area ratio and denial of road setback, floodplain setback, and accessory building height variances for the proposed detached garage, but approval of the requested special exception from the offset requirement to permit the proposed porch and entryway addition to the residence, subject to the following conditions:

1. The proposed covered porch and entryway addition shall extend no closer to the south lot line than the existing residence.
2. A detailed cost estimate for the proposed covered porch and entryway addition must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
3. The two lots must be combined by a Certified Survey Map. The Certified Survey Map must be approved by the Town of Oconomowoc and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit.
4. A Plat of Survey, showing the correct configuration of the residence and the location of the proposed covered porch and entryway addition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval, prior to the



issuance of a zoning permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Since there is an existing three-car attached garage on the property and a detached garage with a total floor area of 805 sq. ft. could be constructed in conformance with the accessory building floor area ratio requirement, a special exception to exceed the maximum permitted accessory building floor area ratio of 3% is not necessary for a reasonable use of the property and would not be in conformance with the purpose and intent of the Ordinance. It has not been demonstrated, as required for a variance, that denial of the requested road setback, floodplain setback, and accessory building height variances for the proposed detached garage would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. If the pending reduction to the established road right-of-way width from 66 ft. to 40 ft. is approved by the Oconomowoc Town Board and the Waukesha County Park and Planning Commission, there would be a conforming location for a detached garage, but even if there is no conforming location for a detached garage, a reasonable use of the property exists with the existing residence and three-car attached garage. Therefore, denial of the requested variances for the detached garage will not prevent a reasonable use of the property.

The proposed covered porch and entryway addition would be farther from the side lot line than the existing residence and require only a special exception from the offset requirement, which does not require the demonstration of an unnecessary hardship. It is felt that a door on the road side of the residence is necessary for a reasonable use of the property and the construction of the proposed covered porch and entryway addition will facilitate the addition of such a door. The proposed porch and entryway addition is not contrary to the public interest and, due to the configuration of the lot and the location of the existing residence, an entryway addition cannot be constructed in conformance with the offset requirement. Therefore, the approval of a special exception from the offset requirement to permit the proposed covered porch and entryway addition, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **BA03:041 DONALD AND CLAIRE WOOLEY**

Ms. Radler

*I make a motion to approve this request with the following conditions:*

- 1. Prior to the issuance of a zoning permit, a complete set of plans, must be submitted to the Planning and Zoning Division staff for review and approval.*
- 2. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the existing residence and proposed addition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*
- 3. If any changes to the existing grade are proposed, a detailed*

*grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.*

*The reasons for this approval are as follows:*

*The proposed addition is a reasonable expansion. There is no garage on the property now. The addition would be 15 ft. from the proposed 40 ft. wide established road right-of-way and the road is a minor dead-end road that serves only two or three additional residences on the peninsula. The chances of this road being expanded are very slight and even if it is expanded, the proposed addition would not affect it.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was to hold the hearing in abeyance until the meeting of June 25, 2003.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

This will allow time for the Town of Summit to make a recommendation regarding reduction of the 66 ft. wide established road right-of-way of the east-west portion of Jenkins Dr. and for the Waukesha County Park and Planning Commission to consider such a reduction.

#### **BA03:042 BRIAN AND LAURA GLAESSNER**

Mr. Ward

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the following change:*

*Condition #5 shall be changed to read, "The proposed residence must be reduced in size so that the total floor area, including the first and second floors of the residence and the attached garage, but not any finished living area in the exposed basement, does not exceed 2,200 sq. ft. The residence must have an attached garage of at least 400 sq. ft."*

*The reason for the change is that, historically, the Board has decided that a 2,200 sq. ft. house and garage is a reasonably-sized house for this area.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for denial of shore and floodplain setback variances, but approval of floor area ratio and open space variances, to permit the construction of a single-family residence, with an attached garage and decks, subject to the following conditions:

1. The proposed residence, attached garage, and decks must be located in conformance with the minimum road setback and offset requirements, with "sewer reductions". This will require the residence and attached garage to be located at least 7 ft. from the side lot lines and at least 17.2 ft. from the road right-of-way, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines and the road as the overhangs exceed two (2) ft. in width. The proposed decks must be located at least 5 ft. from the side lot lines.
2. The proposed residence and decks must be located in conformance with the minimum required shore and floodplain setbacks, utilizing the shore and floodplain setback averaging provision of the Ordinance.
3. The new residence and any proposed stairs to the lake shall be designed to conform with the existing topography. No new retaining walls will be permitted, unless they are determined by the Land Resources Division to be necessary for erosion and sediment control.
4. Any sidewalks, walkways, or stairs along the sides of the residence or leading to the lake shall be no more than 3 ft. wide and they must be at least 3 ft. from the side lot lines.
5. The proposed residence must be reduced in size so that the total floor area, including the first and second floors of the residence and the attached garage, but not any finished living area in the exposed basement, does not exceed 1,800 sq. ft. The first floor of the residence must be at least 850 sq. ft., but not more than 1,000 sq. ft. The residence must conform with the minimum required house size, which is 1,100 sq. ft. for homes with at least 300 sq. ft. of unfinished basement area or 1,300 sq. ft. for homes without at least 300 sq. ft. of unfinished basement area. Finished living area in the exposed basement may be included as floor area for the purpose of meeting the minimum required house size. This will result in a maximum floor area ratio of 31.3%.
6. Prior to the issuance of a zoning permit, a Plat of Survey, showing the location of the proposed residence, attached garage, and decks, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. In order to verify that the proposed residence and decks conform with the required shore and floodplain setbacks, utilizing the shore and floodplain setback averaging provision of the Ordinance, the Plat of Survey must also indicate the shore and floodplain setbacks of the two adjacent residences, as measured perpendicular to the shoreline. The Plat of Survey must also indicate the correct floodplain elevation of 875.1 ft. above mean sea level.

7. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 6.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of shore and floodplain setback variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. The lot depth is sufficient that a reasonably-sized house and attached garage could be located on this lot in conformance with the road setback requirement and the shore and floodplain setback requirements, without variances from those requirements. Therefore, the approval of shore and floodplain setback variances cannot be justified.

Due to the size of the lot, hardships exist with respect to the floor area ratio and open space requirements, and variances from those requirements are necessary for a reasonable use of the property. Conformance with the maximum permitted floor area ratio of 19.5% would allow a total floor area of only 1,126 sq. ft., making it impossible to construct even a minimally-sized, two-car garage and a residence in conformance with the minimum required first floor area of 850 sq. ft. It is also impossible to conform with the minimum open space requirement of 7,000 sq. ft., because the total lot area is only 5,779 sq. ft.

It is felt, however, that the proposed residence is too large for the extremely small lot and that a smaller residence, as recommended, would still provide a reasonable use of the property. Therefore, since variances should only be granted to provide the minimum relief necessary for a reasonable use of the property, the new residence should not be permitted as proposed. As recommended, the new residence will be located in conformance with all locational requirements of the Ordinance. As recommended, the new residence will not adversely affect the adjacent properties or the lake and it will not be contrary to the public interest. Therefore, the approval of floor area ratio and open space variances, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA03:043 KEVIN AND HEATHER BONNELL**

Mr. Schultz

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the following change:*

*It shall be noted in Condition #3 that the residence must have an attached garage of at least 400 sq. ft.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes. Mr. Ward voted no.

The staff's recommendation was for approval, with the following conditions:

1. The proposed residence and attached garage must be located in conformance with the road setback requirements of the Ordinance.

*Note: Based on the Site Plan submitted with the application and using the existing established road right-of-way of 66 ft., the required road setback for the residence and attached garage, utilizing the road setback averaging provision of the Ordinance, would be 28.25 ft. from the edge of the platted road right-of-way. If the Oconomowoc Town Board and the Waukesha County Park and Planning Commission designate the established road right-of-way width of Nickels Point Rd. to be 30 ft., the required road setback for the residence and attached garage, utilizing the road setback averaging provision of the Ordinance, would be 27.9 ft. from the edge of the platted road right-of-way. The above measurements are measured to the outer edge of the wall, provided the overhang does not exceed two (2) ft. in width. If the overhang exceeds two (2) ft. in width, the building must be located the additional distance from the road as the overhang exceeds two (2) ft. in width.*

2. The proposed residence, attached garage, and deck must be located in conformance with the offset, shore setback, and floodplain setback requirements of the Ordinance.

*Note: Based on the Site Plan submitted with the application and using the offset reduction provision of the Ordinance and the shore and floodplain setback averaging provision of the Ordinance, the residence and attached garage must be at least 16.66 ft. from the side lot lines, at least 35.65 ft. from the lake, and at least 32.5 ft. from the 100-year floodplain, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines, the lake, and the 100-year floodplain as the overhangs exceed two (2) ft. in width. Based on the Site Plan submitted with the application and utilizing the offset reduction and the shore and floodplain setback averaging provisions of the Ordinance, the proposed deck will be required to be at least 10 ft. from the side lot line, at least 34.78 ft. from the lake, and at least 30.5 ft. from the 100-year floodplain.*

3. The proposed residence and attached garage must be reduced in size so that the footprint of the residence and attached garage does not exceed 1,800 sq. ft. and the total floor area of the structure, including the first and second floors of the residence and the attached garage, does not exceed 2,600 sq. ft. The first floor of the residence must contain at least 850 sq. ft. This will result in a maximum floor area ratio of 29.3% and a minimum open space of 7,064 sq. ft.

*Note: If the Oconomowoc Town Board and the Waukesha County Park and Planning Commission designate the established road right-of-way width of Nickels Point Rd. to be 30 ft., this will result in a maximum floor area ratio of 24.4% and a minimum open space of 8,864 sq. ft.*

4. The proposed residence must be designed to fit into the existing topography, with no retaining walls.
5. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the

above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

6. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage and deck, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 6.
8. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit a reasonable use of the property in the form of a new residence and attached garage, located in conformance with all locational requirements of the Ordinance. It is impossible to conform with the minimum open space requirement of 10,000 sq. ft. because the lot area, with the existing 66 ft. wide established road right-of-way, is only 8,884 sq. ft. Even if the Oconomowoc Town Board and the Waukesha County Park and Planning Commission designate the established road right-of-way width of Nickels Point Rd. to be 30 ft., the lot area would only increase to 10,664 sq. ft. Therefore, a hardship exists with respect to the open space requirement. The approval of this request, with the recommended conditions, is not contrary to the public interest and will result in the construction of a residence that is appropriately sized for the lot and in keeping with other development in the area. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

#### **ADJOURNMENT:**

Ms. Voelker

*I make a motion to adjourn this meeting at 10:25 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment

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